

Dr. (Smt.) Shanta Nahar v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1461/2003
under Article 226 of the
Constitution of India.

Date of Order : 1st June, 2005

P R E S E N T
HON'BLE MR. JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. k.L.Thakur, Addl.Advocate General.
Mr. B.L.Tiwari, Addl.Govt.Advocate.

BY THE COURT :

Being aggrieved by initiation of disciplinary proceedings the petitioner preferred a writ petition before this Court which came to be disposed of by judgment dated 5.8.1999.

During pendency of aforesaid writ petition the petitioner came to be retired from services on 31.12.1998. The Government of Rajasthan by an order dated 2.4.1999 withdrew the charges levelled against the petitioner, as such the writ petition referred above become infructuous to the extent of giving challenge to initiation of disciplinary proceedings, however, during pendency of disciplinary proceedings promotion to the petitioner from the post of

Dy.Director, Medical and Health Services/Chief Medical and Health Officer or to the post equivalent thereto was not accorded, therefore, the Court by judgment dated 5.8.1999 pleased to order as under:-

“The other reliefs sought by the petitioner is to consider her for promotion, which was denied to her because of pendency of disciplinary proceedings. As the proceedings have been dropped by the State, she is entitled to be considered for promotion from the date her juniors have been considered and promoted, strictly in accordance with law, on the post of Deputy Director/Deputy Superintendent/ Deputy Controller/ Chief Medical and Health Officer/ Addl. Chief Medical & Health Officer/ Addl. Chief Medical & Health Officer/ Principal, Rural Family Planning Center.

If the Department/DPC finds her eligible/suitable for promotion and she is granted promotion, she shall be entitled for all consequential benefits, including arrears of salary of pay, in view of judgment delivered by this Court on 04th August, 1999 in S.B.C.W.P. No.2187/89 – Tulsidas Goldsmith v. State, S.B.C.W.P. No.2187/89.

The respondents shall consider and decide case of the petitioner within three months from the date of filing a representation, along with a certified copy of this order.”

In compliance of the directions quoted above the candidature of the petitioner was considered by competent departmental promotion committee and promotion was accorded to her vide order dated 11.7.2000 against the vacancies pertaining to the year 1990-91. The fixation of the petitioner's pay too was made in the pay scale pertaining to promotional post w.e.f. 31.3.1991 on notional basis.

By an another order dated 25.7.2003 actual benefits arising out of fixation of petitioner's pay in the pay scale pertaining to the promotional post were allowed w.e.f. 13.5.1995, the date on which promotion to a person junior than the petitioner was given. While making fixation of the pay in the pay scale pertaining to promotional post, according to the petitioner, the provisions of Rule 26-A of the Rajasthan Service Rules, 1951 (hereinafter referred to as "the RSR") were not applied.

The petitioner, as stated above, was retired from services on 31.12.1998 but pension and other retiral benefits were not given to her upto 15.2.2001. The factual position as admitted by the parties is sum up as under:-

- (1) Promotion was accorded to the petitioner against the vacancies of the year 1990-91 in pursuance of the directions given by this Court.

- (2) The fixation of the salary in the pay scale pertaining to promotional post was made w.e.f. 31.3.1991 on notional basis.
- (3) No benefit as provided under Rule 26-A of the RSR was given while making fixation of pay on 31.3.1991.
- (4) The actual benefit as a consequence of fixation in higher pay scale was given to the petitioner w.e.f. 13.5.1995.
- (5) The pension and other retiral benefits were released in favour of the petitioner on 15.2.2001.

In the factual back ground above the grievance of the petitioner is also summarised, as contended by the counsel for the petitioner, as under:-

- (1) The promotion was given to the petitioner against the vacancies related to the year 1990-91 and fixation of the pay was also made accordingly but on notional basis, though the same are required to be given actually as the promotion was denied to the petitioner without any just and valid reason.
- (2) The respondents have not extended the benefit of Rule 26-A of the RSR while making fixation of the petitioner's pay in the higher pay scale.
- (3) The pension and other retiral benefits were allowed to the petitioner at a belated stage

without any just and valid reason, therefore, interest @ 12% per annum is required to be given to the petitioner in view of Government of Rajasthan decision circulated under circular dated 3.4.2001 issued by the Government of Rajasthan in light of Division Bench Judgment of this Court in D.B.Civil Special Appeal (Writ) No.297/95.

A reply to the writ petition has been filed on behalf of the respondents. It is contended by the respondents that in compliance of the directions given by this Court by judgment dated 5.8.1999 the candidature of the petitioner was considered by departmental promotion committee and promotion was given to the petitioner against the vacancies of the year 1990-91. The fixation of petitioner's pay was also made as a consequence of her promotion w.e.f. 31.3.1990. The fixation was made on notional basis from 31.3.1991 to 13.5.1995 as no person junior to petitioner prior to 31.5.1995 was promoted to the post concerned. According to the respondents the first person junior than the petitioner viz. Dr.Satyanarain Sharma was promoted on 13.5.1995, therefore, the actual benefits were given to the petitioner as a consequence of her fixation in higher pay scale w.e.f. 13.5.1995. The respondents in their reply have not said anything with regard to non extension of provisions of Rule 26-A of the RSR.

It is pertinent to note that the petitioner in her petition has not given the details making her eligible for application of the provisions of Rule 26-A of the RSR.

The respondents in their reply also stated that the delay was caused in making payment of pension and retiral benefits to the petitioner as the petitioner failed to supply certain informations to the department sought under communication dated 9.6.2000. The letter dated 9.6.2000 is placed on record by the respondents as Anx.R/4.

I have heard counsel for the parties.

I do not find any merit in the first contention of the counsel for the petitioner that the petitioner was entitled for actual benefits as a consequence of her fixation in the pay scale pertaining to promotional post from the year 1990-91. It is true that the promotion was given to the petitioner against the vacancies of the year 1990-91 but no person junior to her was promoted upto 13.5.1995. In view of it the petitioner cannot claim actual benefits arising out of her fixation in the pay scale pertaining to promotional post w.e.f. 31.3.1991. The respondents have already made fixation of the petitioner's pay in the pay scale pertaining to promotional post from 31.3.1991 and also accorded

actual benefits w.e.f. 13.5.1995, the date on which the first person junior than the petitioner was promoted. In this back ground of facts, the claim of the petitioner for actual payment of wages in the pay scale pertaining to promotional post for the period commencing from 31.3.1991 to 12.5.1995 is not justified.

The next contention of the petitioner is with regard to application of provisions of Rule 26-A of the RSR. It is relevant to mention here that necessary details are not available on record, therefore, no specific direction with regard to grant of benefit of Rule 26-A of the RSR can be given by the Court in this regard.

The third contention of the counsel for the petitioner is with regard to allow interest @ 12% per annum against the delayed payment of pension and other terminal benefits is certainly a genuine one. The petitioner retired from services in the month of December, 1998 but for no just and valid reason the pension and other retiral benefits were not accorded to her for petty long time. The reason given by the respondents for not releasing pension and other retiral benefits is that the petitioner failed to supply certain informations as communicated to her by communication dated 9.6.2000. The document dated 9.6.2000 is on record as Anx.R/4. I have perused the

document. By this document the respondents demanded a copy of High School Certificate to verify the date of birth, photocopies of pay slips pertaining to the period commencing from 18.3.1969 to 31.12.1974, the details with regard to leave availed by the petitioner in the period referred above and the details with regard to place of postings in the period mentioned above. The informations sought by the respondents are part of service record and these details were certainly available with the respondents. The payment of pension cannot be delayed for the reasons given by the respondents. It is pertinent to note that Rule 80 of the Rajasthan Civil Services (Pension) Rules, 1986 puts an embargo upon the Head of the Department to forward service book of the Government servant duly completed with all other requisite documents to the Director, Pension Department not later than six months before the date of retirement of person concerned. The Head of Department is required to forward all the details mandatorily. No reason has been given in the present case by the respondents as to why these details were not forwarded by the Head of Office to the Director, Pension in accordance with Rule 80 of the Rules of 1986. In viewm of it the petitioner cannot be held responsible for the delay caused in payment of pension and other retiral benefits. The Government of Rajasthan under its circular dated 4.2.2001 circulated its decision to the effect that in case of delay in authorisation of pension and gratuity

beyond 60 days from the date of retirement the Director, Pension shall also authorise payment of interest @ 12% per annum along with other retiral benefits to the employee. As I have already held that in the present case delay in payment of retiral benefits was without any sufficient reason, therefore, the petitioner is certainly entitled for interest @ 12% per annum.

In view of whatever discussed above, this writ petition is allowed in part and the respondents are directed to make payment of interest to the petitioner @ 12% per annum on the pension and all other retiral terminal benefits given to the petitioner at a belated stage. The respondents shall also decide the question with regard to application of Rule 26-A of the RSR with regard to fixation of petitioner's pay on 31.3.1991. In event, the petitioner is found eligible for getting benefit, as prescribed under Rule 26-A of the RSR, same shall be accorded to her within a period of six months from today.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.